

Message Text

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TO AMEMBASSY MEXICO PRIORITY
INFO USMISSION USUN NEW YORK
USMISSION GENEVA
USMISSION OECD PARIS
AMEMBASSY NEW DELHI

C O N F I D E N T I A L STATE 215087

E.O. 11652: GDS
TAGS:EGEN, UNCTAD, MX
SUBJECT: U.S. VOTE ON CHARTER OF ECONOMIC RIGHTS AND
DUTIES
REFS: (A) STATE 203809 (B) MEXICO 7723 (C) GENEVA 5670

1. SUMMARY: AMB IS REQUESTED TO REVIEW RESULTS OF RECENT
GENEVA NEGOTIATIONS ON CHARTER WITH GOM, DESCRIBE HOW
USG VIEWS TACTICAL POSSIBILITIES OF REACHING AGREEMENT
ON CHARTER AT IMPENDING NY NEGOTIATIONS, AND TO INFORM
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GOM THAT, IF AGREEMENT CANNOT BE REACHED, AND IF CHARTER

IS PUT TO VOTE, USG WILL BE OBLIGED TO VOTE AGAINST
THE CHARTER IF IT CONFLICTS WITH IMPORTANT USG INTERESTS.
END SUMMARY.

2. DEPT GREATLY APPRECIATES MEXICO'S 7723 AND, IN
ACCORDANCE WITH IT, REQUESTS AMB TO CALL ON FONSEC
RABASA TO MAKE FOLLOWING POINTS.

3. (A) USG SHARED DISAPPOINTMENT OF MEXICAN DELEGATION
AT THE VERY MODEST PROGRESS MADE AT THE RECENT GENEVA
CONSULTATIONS ON THE CHARTER. USG PARTICULARLY REGRETTED
THAT GROUP OF 77 -- OR, AT ANY RATE, SOME MEMBERS WHO
APPEAR TO DOMINATE IT -- WERE UNWILLING TO ACCEPT THE
SUBSTANCE OF MUCH OF THE BRILLANTES FORMULA, WHICH, IN
TURN, EMBODIES THE BULK OF THE MAW-RABASA AGREEMENT.

(B) AS SEC KISSINGER INFORMED FONSEC RABASA ON AUGUST 29,
THE MAW-RABASA AGREEMENT REPRESENTS THE ESSENTIAL LIMITS
OF CONCESSIONS THAT THE USG IS PREPARED TO MAKE TO MEET
THE WISHES OF THE GROUP OF 77 TO PROVIDE IN THE CHARTER
FOR REGULATION OF FOREIGN INVESTMENT AND MNCS AND
NATIONALIZATION OF FOREIGN PROPERTY. IN GENEVA, THE
USDEL ENDEAVORED TO INTERPRET THE MAW-RABASA AGREEMENT, AS
RECAST BY BRILLANTES, FLEXIBLY IN ORDER TO MAXIMIZE THE
POSSIBILITIES OF GENERAL AGREEMENT. IT FOUND, HOWEVER,
THAT, WHILE SOME MEMBERS OF THE GROUP OF 77, SUCH AS
MEXICO AND EGYPT, WERE HELPFULLY DISPOSED, OTHERS, SUCH AS
INDIA, INSIST ON AUTHORIZING A NATIONALIZING STATE DEFIN-
ITELY TO DISPOSE OF FOREIGN PROPERTY AS IT PLEASES,
WITHOUT SUFFICIENT REGARD TO ITS INTERNATIONAL OBLIGA-
TIONS. THERE WAS UNWILLINGNESS TO AFFIRM RESPECT FOR
"INVESTMENT AGREEMENTS" (I.E., TO USE A NEUTRAL TERM THAT
COULD BE INTERPRETED AS INCLUDING AGREEMENTS BETWEEN A
STATE AND A FOREIGN INVESTOR BUT WHICH ALSO COULD BE IN-
TERPRETED AS REFERRING ONLY TO INTER-STATE AGREEMENTS).
MORE THAN THIS, THERE WAS EVEN UNWILLINGNESS TO PROVIDE
THAT, IN CASE OF NATIONALIZATION, JUST COMPENSATION SHALL
BE PAID. IF STATES OF THE VIEWPOINT OF INDIA, ALGERIA AND
YUGOSLAVIA SUCCEED IN CONTINUING TO IMPOSE THEIR WILL ON
OTHER MEMBERS OF THE GROUP OF 77, AS APPARENTLY THEY DID
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IN MEXICO AND GENEVA, THE OUTLOOK FOR GENERAL AGREEMENT ON
THE CHARTER WILL NOT BE GOOD. THIS IS NOT TO SAY THAT, IN
THE NY NEGOTIATIONS SCHEDULED TO BEGIN OCT 8, USG WILL IN-
SIST ON THE TERMS OF THE BRILLANTES FORMULA. IT WILL BE
PREPARED TO EXAMINE WITH AN OPEN MIND ANY FORMULAE WHICH
WILL NOT PREJUDICE ITS VITAL POSITIONS ON KEY ISSUES.

(C) IN NY NEGOTIATIONS, USDEL LOOKS FORWARD TO JOINING

WITH MEXICAN DEL AND CHAIRMAN CASTANEDA IN MAXIMUM EFFORT TO REACH AGREEMENT. KEY TO AGREEMENT REMAINS ART 2 ON REGULATION OF FOREIGN INVESTMENT, MNCS AND NATIONALIZATION AS WELL AS DELETION OF NEWLY INTRODUCED, CONTROVERSIAL PROPOSALS ON PRODUCERS CARTELS, INDEXATION AND RESTITUTION FOR RAVAGES OF COLONIALISM (SEE SUBPARA E OF THIS MESSAGE). AS TO ART 2, USG HOPES THAT, PRIOR TO OCT 8, MEXICO WILL ENDEAVOR TO PERSUADE INDIA, ALGERIA, YUGOSLAVIA AND OTHER INFLUENTIAL MEMBERS OF GROUP OF 77 OF THEIR OUTLOOK TO AGREE TO NEUTRAL TERMINOLOGY, SUCH AS AN UNQUALIFIED REFERENCE TO "INTERNATIONAL OBLIGATIONS", WHICH WILL PERMIT GROUP OF 77 TO MAINTAIN THAT RIGHT OF NATIONALIZATION IS SUBJECT TO NO MORE THAN TREATY COMMITMENTS, IF ANY, WHILE GROUP B CAN CONSTRUE THAT TERM AS EMBRACING CUSTOMARY INTERNATIONAL LAW AS WELL AS TREATIES.

THIS WILL REQUIRE INDIA AND LIKE-MINDED STATES TO (1) DROP INSISTENCE ON SUBJECTING NATIONALIZATION TO UNRESTRAINED DISCRETION OF NATIONALIZING STATE, AND (2) REFRAIN FROM PRESSING A PROVISION THAT WOULD PROHIBIT A STATE FROM EVER SEEKING SO-CALLED "PRIVILEGED TREATMENT" FOR ITS INVESTORS, I.E., TREATMENT THAT MAY BE BETTER THAN A GOVERNMENT CHOOSES TO ACCORD ITS OWN NATIONALS. FOR ITS PART, USG PLANS TO MAKE APPROPRIATE REPRESENTATIONS TO INDIA, ALGERIA AND YUGOSLAVIA. TACTICALLY, USG VIEW IS THAT OCT NEGOTIATIONS SHOULD INITIALLY CONCENTRATE ON ARTICLE 2. IF IT IS RESOLVED, OTHER OUTSTANDING ISSUES SHOULD PROVE MANAGEABLE.

(D) IF INDEED ART 2 CAN BE SETTLED, WAY WOULD BE OPEN TO PUTTING MAXIMUM PRESSURE ON SOVIET GROUP TO ACCEPT THE BRILLANTES COMPROMISE ON MFN AND NON-DISCRIMINATION THAT THE EC AND OTHER MEMBERS OF THE WORKING GROUP ARE PREPARED

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TO ACCEPT. DIFFERENCES ON WORDING OF VARIOUS OTHER PROVISIONS OF CHARTER, WHOSE INCLUSION IN THE CHARTER IN SOME FORM IS NOT DISPUTED, SUCH AS THE TRANSITIONAL CLAUSE, SHOULD THEN FALL INTO PLACE.

(E) THE REMAINING KEY TO AGREEMENT IS TO DELETE RELATIVELY UNDEBATED SUBJS, NOTABLY, PRODUCERS' ASSOCIATIONS; INDEXATION (RELATIONSHIP OF EXPORT PRICES TO IMPORTS); "FULL COMPENSATION" FOR RAVAGES OF COLONIALISM, OCCUPATION, AND APARTHEID; SECURITY OF SUPPLY OF RAW MATERIALS; AND COMMODITY AGREEMENTS. LATTER TWO PROVISIONS, STRONGLY SUPPORTED BY EC, WERE INTRODUCED AT AN EARLY STAGE IN CHARTER AND EC MAY REASONABLY MAINTAIN THAT THEY ARE TO BE DISTINGUISHED FROM RECENTLY INTRODUCED SUBJECTS OF PRODUCERS' ASSOCIATIONS, INDEXATION AND RESTITUTION.

USG SUPPORTS SATISFACTORY PROVISION ON SECURITY OF SUPPLY BUT AGREES WITH MEXICAN DEL THAT GROUP OF 77 PROBABLY WILL NOT ACCEPT IT. THUS USG IS OPEN TO AN ARRANGEMENT WHEREBY ALL OF THESE SUBJECTS WOULD SIMPLY BE DELETED FROM CHARTER, AS MEXICAN DEL ENVISAGED IN GENEVA. USG IS TAKING STEPS TO PROMOTE THIS VIEW AMONG GROUP B AND TRUSTS THAT MEXICO WILL PRESS IT AMONG GROUP OF 77. AS WE SEE IT, HOWEVER, THIS DEAL CAN ONLY BE STRUCK, IF AT ALL, IF AGREEMENT IS REACHED ON ART 2. IT SHOULD BE UNDERSTOOD THAT USG COULD GIVE ITS SUPPORT TO THE CHARTER ONLY IF UNACCEPTABLE PROVISIONS ON PRODUCERS' CARTELS, INDEXATION AND RESTITUTION ARE OMITTED, AS WELL AS DIFFERENCES ON ART 2 RESOLVED.

(F) IF, HOWEVER, ART 2 IS NOT RESOLVED, OR IF OTHER IMPORTANT AND PROFOUNDLY UNACCEPTABLE PROPOSALS (SUCH AS ONE THAT WOULD SEEM TO ENDORSE PRODUCERS' CARTELS) REMAIN, AND IF THEY ARE PRESSED TO A VOTE RATHER THAN SUBJECTED TO CONTINUING NEGOTIATIONS (TO WHICH USG IS OPEN), THEN USG WILL BE FORCED TO VOTE IN ACCORDANCE WITH ITS SUBSTANTIVE POLICIES, I.E., TO VOTE AGAINST THE CHARTER AS A WHOLE. IN OUR CONSIDERED VIEW, TO PROTECT OUR INTERESTS ON A VITAL SUBJECT SUCH AS NATIONALIZATION, A VOTE AGAINST A CHARTER THAT SETS OUT PRINCIPLES WE REJECT WILL BE REQUIRED IN ORDER TO PREVENT ENDOWING THOSE PRINCIPLES WITH AN AUTHORITY WHICH THEY SHOULD NOT CONFIDENTIAL

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IN FACT ENJOY IN VIEW OF USG OPPOSITION. AS FONSEC RABASA INDICATED TO SECRETARY AUGUST 29 IN RESPECT OF RESOLUTIONS OF SIXTH SPECIAL SESSION OF UNGA, IT DOES NOT SUFFICE TO PROTECT A MEMBER'S INTERESTS FOR IT MERELY TO STATE RESERVATIONS; A NEGATIVE VOTE IS REQUIRED.

(G) MEXICO WILL APPRECIATE THAT USG WOULD NOT LIGHTLY VOTE AGAINST A CHARTER TO WHICH MEXICO HAS GIVEN ITS PARTICULAR SPONSORSHIP. INDEED, USG WOULD BRING ITSELF TO VOTE AGAINST THE CHARTER ONLY WITH GREATEST DISAPPOINTMENT AND REGRET. IT HAS HOPED FOR A BALANCED CHARTER THAT WOULD ADVANCE THE ECONOMIC INTERESTS OF ALL STATES AND PROMOTE WIDER UNDERSTANDING AND COOPERATION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES. AS GOM KNOWS, SEC KISSINGER AND HIS REPS HAVE PERSISTENTLY SOUGHT THAT KIND OF CHARTER. IF THAT ENDEAVOR FAILS, IT WILL NOT BE BECAUSE OF LACK OF EFFORT ON PART OF USG. WE BELIEVE, HOWEVER, THAT GOM SHOULD BE ADVISED WELL IN ADVANCE OF USG INTENTION TO VOTE AGAINST A CHARTER THAT RUNS SERIOUSLY COUNTER TO ITS INTERESTS, NOT LEAST BECAUSE WE HOPE THAT, WITH THIS KNOWLEDGE, GOM MAY BE MORE SUCCESSFUL IN PRESSING THE DIVERGENT INTERESTS CONCERNED

INTO REACHING THE AGREEMENT SOUGHT BY BOTH USG AND
MEXICO. INGERSOLL

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